



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-T-, LLC

DATE: MAY 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a tax preparation service, seeks second preference immigrant classification for the Beneficiary, its owner, as a member of the professions holding an advanced degree, and also seeks a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Beneficiary did not qualify for classification as a member of the professions holding an advanced degree or the equivalent, and that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

On appeal, the Petitioner submits additional documentation and asserts that the Beneficiary is eligible for a national interest waiver. It does not address the Director's finding that it did not provide sufficient evidence that the Beneficiary qualifies for the underlying classification.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(i) provides that, in order to show an individual is a professional holding an advanced degree, the petition must be accompanied by:

- (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup>

## II. ANALYSIS

### A. Eligibility for the Underlying Visa Classification

As noted above, the regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to demonstrate that the Beneficiary is a professional holding an advanced degree, the petition must be accompanied by either an official academic record showing that she holds an advanced degree or a foreign equivalent degree, or an official academic record showing that she holds a United States baccalaureate degree or a foreign degree equivalent and evidence in the form of letters from current or former employers showing that she has at least five years of progressive post-baccalaureate experience in the specialty.<sup>2</sup>

Here, the record includes a copy of the Beneficiary’s bachelor of arts degree in French language and literature from [REDACTED] University in South Korea.<sup>3</sup> The record, however, does not contain an academic credentials evaluation to establish her foreign degree’s equivalency to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A). Thus, the Petitioner has not documented that the Beneficiary holds the foreign equivalent of a degree above that of baccalaureate. Alternatively, it has not shown that her degree is the foreign equivalent of a United States baccalaureate degree nor has it established, through letters from current or former employers, that the Beneficiary has progressive post-baccalaureate experience in her specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director determined that the Beneficiary did not qualify for classification as a member of the professions holding an advanced degree and we affirm that finding. On appeal, the Petitioner does not address the Director’s finding nor does it provide additional evidence of the Beneficiary’s eligibility for the classification sought. Thus, the appeal will be dismissed on this basis.

### B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that the Beneficiary qualifies for

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> The Petitioner does not claim that the Beneficiary qualifies as an individual of exceptional ability, thus, we will limit our analysis to whether she meets the requirements as an advanced degree professional.

<sup>3</sup> The record also includes transcripts from [REDACTED] College in [REDACTED], California indicating that the Beneficiary completed some coursework in an Associate’s degree in arts and a transcript from [REDACTED] College in [REDACTED] California, reflecting coursework in an Associate’s Degree in Arts with a major in graphic design. The record does not include evidence of a degree from either school.

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classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner does not claim that the Beneficiary meets the regulatory criteria for classification as an individual of exceptional ability and it has not demonstrated that she qualifies as an advanced degree professional. As the Petitioner has not established the Beneficiary's eligibility for the underlying immigrant classification, further discussion of the national interest waiver serves no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not demonstrated that the Beneficiary qualifies for the underlying visa classification, it has not established eligibility for the immigration benefit sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-T-, LLC.*, ID# 1218240 (AAO May 3, 2018)